IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Crl.L.P..No. 541 of 2007()

CC.260/2002 of J.M.F.C., SASTHAMCOTTA

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APPELLANT/COMPLAINANT :

K.K.VASUMATHY,RANJITH BHAVANAM,
VADAKKANMYNAGAPPALLY P.O.,MYNAGAPPALLY.

BY ADV. SRI.SOORANAD S.SREEKUMAR

RESPONDENTS: ACCUSED & STATE:

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1. K.KARUNAKARAN,S/O.KALIKUTTY,
SANTHOSH BHAVANAM,CHUNAKKARA NADUVIL,
CHUNAKKARA P.O,CHARUMOODU (VIA),
ALAPPUAZHA DISTRICT.

2. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MOHAMMED FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl. L.P.No. 541 of 2007

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Dated this the10th day of August, 2007

O R D E R

Petition to grant special leave to appeal is filed by the complainant against the judgment in C.C.No.260/2002 on the file of the Judicial Magistrate of the First Class, Sasthamcotta. The petitioner had field the complaint alleging that the 1st respondent had borrowed an amount of Rs.2,00,000/- from her and in discharge of the above debt, he issued a cheque and when it was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the 1st respondent. Hence, on complying the provisions regarding the notice etc., the complaint has been filed. To prove the case against the 1st respondent, the petitioner herself was examined as PW1 and Exts.P1 to P5 were marked. After closing the evidence adduced by the petitioner, the 1st respondent was questioned under section 313 Cr.P.C. He denied the allegation in the complaint and stated that he had no transaction with the petitioner. He also stated that an amount of Rs.50,000/- has been borrowed from the husband of the petitioner in connection with the marriage of a relative of him and at the time of availing the amount the wife of the 1st

respondent had transferred 10 cents of property as security in the name of the petitioner and along with the same the 1st respondent had entrusted a blank cheque as collateral security to the husband of the petitioner and even after repayment of the amount the cheque was not returned to him and that cheque was misused by the petitioner for filing the complaint. To prove the case, DWs.1 to 3 were examined and Exts.D1 and D2 were marked. After considering the entire evidence the trial court found that the petitioner did not succeed to establish the issuance of Ext.P1 cheque by the 1st respondent in consideration of the amount mentioned therein and hence no liability could be fastened on the 1st respondent for offence under section 138 of the Negotiable Instruments Act .

2. After considering the entire evidence and after going through the records made available to this Court, this Court is of the view that the finding of the trial court is on evidence and it requires no interference by this Court. Hence, leave is rejected.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.L.P.No. Of 200

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Judgment
-7-2007